Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

MARY JOY ANN GUSTILO and
JOSE VICENTE GUSTILO, III,
PETITIONERS

v.

NADINA (MARAVILLA) GUSTILO, Individually
and as Former Administratrix of
The Estate of Armando C. Gustilo, Deceased,
and as Guardian of June Salvacion (Maravilla)
Gustilo; JOSEPH S. HORRIGAN, as Guardian Ad Litem
and Attorney Ad Litem of June Salvacion Gustilo;
and the KANALY TRUST COMPANY, as Administrator
of the Estate of Armando C. Gustilo, Deceased,
RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE FOURTEENTH COURT OF APPEALS (HOUSTON) TEXAS

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43 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether customary international law (the Law of Nations) and federal court decisions concerning comity as a policy of the United States in relationships with cooperating foreign nations are "federal law" and the "supreme law of the land" under Article VI of the U.S. Constitution.

2. Whether, under supreme law of the land, Texas courts, in determining titles of Philippine aliens to estate of deceased Philippine domiciliary, may arbitrarily refuse to discern, discuss and apply controlling Philippine statutes and case authority.

3. Whether, under the supreme law of the land and U.S. treaties, Texas court may capriciously substitute its opinion for the decision of Philippine Appeals Court and Philippine Supreme Court on Philippine issues concerning these Philippine parties.

4. Whether refusal of Texas courts to discern, discuss and apply or distinguish Philippine statutes and case authority in respect to issues of Philippine heirship, coverture or filiation constituted *denial of justice* to adversely-effected Philippine aliens for which rectification is required by the International Covenant on Civil and Political Rights and international law and the Universal Declaration of Human Rights.

5. Whether denial by Texas Court of Appeals of alien Petitioners' due process rights under Rule 90(a), Texas Rules of Appellate Procedure, to full discussion of seasonably raised foreign law issues and issue of cumulative effects of unjust and erroneous judicial acts of trial court constituted a *denial of justice* under international law and the Universal Declaration of Human Rights.

LIST OF PARTIES

The parties to the proceeding below set forth in the caption are as follows:

1. Mary Joy Ann Gustilo
2. Jose Vicente Gustilo, III
3. Nadina Maravilla Gustilo
4. Joseph A. Horrigan
5. June Salvacion Gustilo
6. Kanaly Trust Company

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A. In suit involving Philippine nationals and a Philippine estate, Texas Probate Court

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B. The Texas Court of Appeals of the 14th District violated Rule 90(a) of Texas Rules of Appellate procedure and denied an essential appellate function by refusing or failing to discern, discuss and distinguish seasonably raised material law issues. Cumulative effect upon adversely affected Philippine nationals constituted not only a violation of due process rights but a *denial of justice* and appellate accountability 24

C. Texas courts, at each level, failed to accord Philippine Petitioners fair and due judicial process under applicable Philippine, New Jersey and established, customary international law. This failure or refusal to pronounce and apply applicable law results in a denial of justice to petitioners under the Law of Nations and violates the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights 27

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No.

IN THE
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OCTOBER TERM, 1997

MARY JOY ANN GUSTILO and
JOSE VICENTE GUSTILO, III,
PETITIONERS

v.

NADINA (MARAVILLA) GUSTILO, Individually
and as Former Administratrix of
The Estate of Armando C. Gustilo, Deceased,
and as Guardian of June Salvacion (Maravilla)
Gustilo; JOSEPH S. HORRIGAN, as Guardian Ad Litem
and Attorney Ad Litem of June Salvacion Gustilo;
and the KANALY TRUST COMPANY, as Administrator
of the Estate of Armando C. Gustilo, Deceased,
RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE FOURTEENTH COURT OF APPEALS (HOUSTON) TEXAS

TO THE HONORABLE SUPREME COURT
OF THE UNITED STATES:

Petitioners, Mary Joy Gustilo and Jose Vicente Gustilo, III respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Fourteenth Court of Appeals of the State of Texas, entered in the above-entitled case on July 3, 1996.

OPINIONS AND ORDERS BELOW

1. Motion for Stay granted 6/12/97. Order from Fourteenth Court of Appeals reprinted at Appendix A (p.A-1).

2. Motion for Rehearing of Writ of Error, overruled 4/18/97. Notice of denial from Texas Supreme Court reprinted at Appendix B (p.A-2).

3. Application for Writ of Error denied 1/31/97. Notice of denial from Texas Supreme Court reprinted at Appendix C (p.A-4).

4. Opinion of the Fourteenth Court of Appeals entered 7/3/96. Unpublished. Reprinted at Appendix D (p.A-5).

5. Motion for Rehearing and Motion for Rehearing En Banc, Fourteenth Court of Appeals, denied August 15, 1996. Notice from Fourteenth Court of Appeals reprinted at Appendix E.

6. Judgment of Texas Probate Court No. 1, Harris County, Texas entered 6/1/92.

JURISDICTION

The Judgment of the Fourteenth Court of Appeals of Texas at Houston was entered on July 3, 1996 (see Appendix D p.A-5, *infra*). Application for Writ of Error to Texas Supreme Court was denied January 31, 1997. Motion for Rehearing of Petitioners' Application for Writ of Error was overruled on April 18, 1997. Order of denial reprinted at Appendix G, *infra*. Motion for Stay Pending Petition to United States Supreme Court for Writ of Certiorari was granted June 12, 1997.

Appellate jurisdiction of United States Supreme Court is invoked pursuant to Article III, Section 2 of the United States

Constitution[1] and pursuant to 28 USC §1257(a) and Rules 10(b) and (c) of the Rules of this Court.

Article III jurisdiction is also provided by The International Covenant on Civil and Political Rights, as ratified by Senate Resolution.[2]

Case presents an important federal question affecting United States foreign relations and Constitutional rights of aliens under protection of the United States courts by international law and by express treaty.

Facts and Law Supporting Jurisdiction

1. Conflict between state court decisions. Texas decision by state court of last resort[3] in this case[4] (hereafter "*Gustilo v. Gustilo*"): (1) refused to give credit and effect to Philippine statutory law and case authority; and (2) denied effect to

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[1] *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816); *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 783 (1984).

[2] The International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (1966); U.N.G.A. Res. 2200 (1976); Senate Ratification June 8, 1992. *Resolution of Advice and Consent to Ratification of The International Covenant on Civil and Political Rights:* 138 Cong. Rec. S4781 (1991) (Appendix H).

[3] Texas Supreme Court finally denied Application for Writ of Error April 18, 1997.

[4] *Jose Vicente Gustilo, III and Mary Joy Ann Gustilo, a Minor Child, By and Through her Guardian and Next Friend, Milagros Barco, v. Nadina Gustilo, Individually and as Former Administratrix of the Estate of Armando C. Gustilo, Deceased, and as Guardian of June Salvacion Gustilo; Joseph S. Horrigan, as Guardian Ad Litem and Attorney Ad Litem of June Salvacion Gustilo; and The Kanaly Trust Company, as Administrator of the Estate of Armando C. Gustilo, Deceased*, No. 14-93-00931-CV; In the Fourteenth Court of Appeals for the State of Texas.

Philippine decision *Gustilo v. Agdamag*[5], both before and after affirmation by the Philippine Supreme Court. Texas court held foreign decision was not final at time of Texas trial; therefore, Philippine decision was not to be noticed--even after it became final. Texas Supreme Court refused to correct these decisions.

Determinations (1) and (2) were upon issues governed by supreme law of the land under Article VI, Clause 2 of U.S. Constitution and under International Covenant on Civil and Political Rights and Universal Declaration of Human Rights[6]. These same questions were determined correctly by Texas Supreme Court in direct conflict with *Gustilo v. Gustilo*, viz:

As to item (1) *supra*, *Gannon v. Payne*, 706 S.W.2d 304, 306, 307 (Tex. 1993); *Robertson v. Estate of McKnight*, 609 S.W.2d 534, 537 (Tex. 1980). *Gutierrez v. Collins*, 583 S.W.2d 312, 319-321 (Tex. 1979).

As to item (2) *supra*, *Scurlock Oil Co. v. Smithwick*, 724 S.W. 2d 1, 6 (Tex. 1986), citing as authority *Butler v. Eaton*, 141 U.S. 240, 243, 11 S.Ct. 985, 986-87, 35 L.Ed 713 (1891), *Texas Beef Cattle Co. v. Jeff Green*, 921 S.W.2d 203, 214 (Tex. 1996).

2. Important question of federal law not decided. Accepting that there is much authority supporting first issue, page (i): customary international law treaties and federal decisional law concerning comity among cooperating foreign nations are the supreme federal law[7] of the land, a question then arises:

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[5] *Gustilo v. Hon. Fernando P. Agdamag, Presiding Judge, Branch 138, Regional Trial Court*, C.A. GR Sp. No. 28626, Court of Appeals, Philippines, Seventh Division.

[6] UNIVERSAL DECLARATION OF HUMAN RIGHTS, U.N.G.A. Res. 217, U.N. Doc. A/810 (III 1948).

[7] *The Paquete Habana*, 175 U.S. 677, 700 (1900). See also International Law of the United States, Paust, Carolina Academic Press (1996). But contrast (continued...)

Whether under 28 USC 1257(a), formerly Section 25 of the Judiciary Act of 1789, and under Article III, Section 2, and Article VI, clause 2 of the U.S. Constitution and Senate Resolution 138 Cong. Rec. S.4781 (cited note 2) and related multilateral compacts (notes 2 and 6), unjust judicial acts committed by state court, by which protected alien is denied due and fair redress, may be reviewed and rectified by the United States Supreme Court on Writ of Certiorari to state court of last resort.

3. State court decision conflicts with relevant decision of Supreme Court. *Gustilo v. Gustilo* denied comity upon no more basis than caprice and in direct conflict with the federal common law and customary international policies of comity, as declared by *The Paquete Habana*, 175 U.S. 677, 700 (1900). Under *Butler v. Eaton*, 141 US 240, 243 (1891), when final decision in parallel case reverses basis for decision of lower court, lower court decision should be reversed. Failure to extend comity in this case denied reversal of conflicting probate court decision.

STATUTES AND TREATIES INVOLVED

U.S. CONSTITUTION: Article III, Section 2; Article VI, Clause 2; Fifth Amendment; Fourteenth Amendment (Appen. T)

U.S. TREATIES:

61 Stat 1174: Treaties and Other International Acts Series 1568. *Treaty of General Relations Between the United States of America and the Republic of the Philippines*. Treaty & Protocol signed Manila 7/4/46. Entered into force 10/22/46. (Appen. DD)

UNIVERSAL DECLARATION OF HUMAN RIGHTS; U.N.G.A. Res. 217, U.N. Doc. A/810 (III 1948). Adopted by the United Nations General Assembly 12/10/48. (Appen. V)

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[7](...continued)
narrow Fifth Circuit rule in diversity case, *Success Motivation Inst. of Japan v. S.M.I.*, 966 F.2d 1007 (Fifth Cir. 1992).

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: 999 U.N.T.S. 171. Adopted by United Nations General Assembly 12/16/66. G.A. Res. 2200. Entered into force 3/23/76. The United States ratified the covenant on 6/8/92. *U.S. Senate Resolution of Advice and Consent to Ratification of the International Covenant on Civil and Political Rights:* 138 Cong. Rec. S4781 (1991). (Appen. H)

FEDERAL STATUTES:

Title 42 §1983 USC and Title 28 §1257(a) USC
Judiciary Act of 1789, Sections 9, 13, 25 (Appen. II)

FEDERAL RULES: Supreme Court Rules 10(b), (c) (Appen. JJ)

TEXAS STATUTES AND RULES OF COURT:

Texas Family Code, Sections 2.22 and 12.02 (Appen. KK)

TEX.R.APP.P. 90(a) (Appen. LL)

NEW JERSEY STATUTES: R.S. 37:1-10. N.J.S.A. (Appen. MM)

PHILIPPINE STATUTES:

Civil Code of the Philippines Annotated, Paras, Ninth Ed., 1978: Articles 15, 71, 255, 256, 263, 1409 and 2035. (Appen. Q, R, M, K, Y and W, respectively)

Family Code of the Philippines, from *The Family Code of the Philippines Explained*, Lizaso, Vol.2, 1990 Ed.: Articles 170 and 171. (Appen. L)

STATEMENT OF THE CASE

Nature of the Case

Petitioners, Mary Joy Gustilo ("Mary Joy") and Jose Vicente Gustilo, III ("Jovi") are aliens--i.e., Philippine citizens and domiciliaries. Mary Joy and Jovi seek to retain titles to properties that devolved to them under Philippine law from their deceased father, Armando Gustilo ("Gustilo"), former Philippine governor and Philippine domiciliary.

Petitioners' titles to Gustilo estate depend upon application of unambiguous principles of Philippine statutory law and upon well-recognized and unambiguous decisions of the Supreme Courts of the Philippines and New Jersey. Petitioners claim and demonstrate flagrant denial of justice in Texas state courts resulting from refusal of those courts to yield to Constitutional imperatives regarding the supreme law of the land. This federal law includes customary international law or Law of Nations and treaties and compacts[8]. In this case, Texas courts were bound to provide Petitioners full and fair access to adjudicatory functions of the courts and adjudication in conformity with supreme federal law regarding matters of national interest and concern affecting foreign policy and international relations.

Courts' Refusal to Consider Foreign Decision and Foreign Law

Petitioners, by briefs and motions and argument, requested Texas courts to consider and apply Philippine and New Jersey law, applicable under customary international law and a natural and ordinary incident of their predominantly Philippine claims. It is apparent that all such authority has been either ignored or given no weight by the Texas courts in respect to, *inter alia*, the following:

1) *Gustilo v. Agdamag*, G.R. Sp. No. 28626, Court of Appeals, Manila, Seventh Division, February 16, 1993 (Appendix I) held compromise agreements divesting Petitioners to be void.

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[8] Treaties and compacts: UNIVERSAL DECLARATION OF HUMAN RIGHTS (cited note 6). INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (cited note 2). *U.S. Senate Resolution of Advice and Consent to Ratification of the International Covenant on Civil and Political Rights* (cited note 2).

61 Stat 1174: Treaties and Other International Acts Series 1568. *Treaty of General Relations Between the United States of America and the Republic of the Philippines*. Treaty and Protocol signed at Manila 7/4/46. Entered into force 10/22/46.

2) Respondents' affirmative defenses were denied on their joint motion for rehearing before the Philippine Supreme Court (*Gustilo v. Court of Appeals*, G.R. No. 111237, Philippine S. Ct., March 23, 1994 [Appendix J]). Original Philippine order denying certiorari was dated January 26, 1994.

3) Article 263 of the Philippine Civil Code[9] (Appendix K) and its nearly identical successor, Family Code of the Philippines, Articles 170 and 171 (Appendix L), prohibit action to determine the filiation of June Salvacion against her presumed legitimacy at time in question. Her mother's "correction" of public registry (*Maravilla v. Local Civil Registrar*), seven years after the date of recordation of her birth as "June Salvacion Maravilla", could not affect filiation of June Salvacion.

4) Articles 263, 255 and 256 of the Philippine Civil Code (Appendices K and M) provided the exclusive means under Philippine law of impugning June Salvacion's status as the legitimate child of Francisco Maravilla; but such an action could not have been brought by the mother of the child under Philippine law, nor could it be brought by the father after the passage of one year's time in most cases.

5) A Philippine trial court, on pleadings to correct the record of a certificate of birth, is without jurisdiction or power to adjudicate more serious issues [*Ty Kong v. Republic of the Philippines*, 94 Philippine Reports 321, 1954 (attached as Appendix N], such as filiation or heirship [*Republic v. Bartolome*, Vol. 138 Supreme Court Reports Annotated, 442 (1985), and *V.D.A. DeCastro v. Republic*, Vol. 134 Supreme

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[9] All references to the "Philippine Civil Code" are to the "Civil Code of the Philippines Annotated, Paras, Ninth Edition, 1978". References to the "Family Code of the Philippines are to the "Family Code of the Philippines, Nolledo" and to the "Family Code of the Philippines Explained, Lizaso, Vol. 2, 1990 Edition".

Court Reports Ann., 14 (1985) (pertinent excerpts attached as Appendices O and P)].[10]

6) Article 15 of the Civil Code of the Philippines (Appendix Q) provides that a foreign marriage, if void where performed, would be void in the Philippines; but if not void where performed but bigamous under Article 71 of the Civil Code of the Philippines (Appendix R), is also void in the Philippines.

7) An attempted marriage under the circumstances of the case at bar would be void. *Yap v. Court of Appeals* (Philippine S. Ct., October 28, 1986) (Appendix S). *Macadangdang v. Court of Appeals*, 199 Sup. Ct. Reports Ann. 73 (September 12, 1980) (Appendix U) holds that a recitation by applicant in a marriage license application is no evidence.

8) Nadina's bigamous second marriage obtained in New Jersey was void from its inception. *Dakunzo v. Edgye*, 117 A.2d 508 (N.J. Sup. Ct. 1955), also controlling statute R.S. 37:1-10 N.J.S.A. The recitation by Nadina on her marriage application that an annulment has occurred is not a finding or entry by a public official (see *Macadangdang* at Appendix U), but is, itself, a cause for invalidity under *Dakunzo*, *supra*.

9) Under Article 2035 of the Civil Code of the Philippines (Appendix W), the compromise agreement was void *ab initio* as attempting to create heirship and status by agreement, and as construed and applied in *Jose Vicente Gustilo, III v. Agdamag* (see Appendix I).

10) The Philippine Supreme Court, in *Arsenal v. Intermediate Appellate Court*, 1986 Philippine Supreme Court, Lexus 2709 (July 14, 1986) (Appendix F), states that:

> "Under the provisions of the Civil Code, a void contract is inexistent from the beginning. . . . [T]he right to set

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[10] No contrary decision by the Philippine Supreme Court **permitting a collateral attack on presumed filiation or legitimacy** by means of a petition for "correcting the registry" has been found, and none is believed to exist.

up the defense of its illegality [cannot] be waived (Art. 1409, Civil Code)." (*Id.* at p.A-37).

Arsenal also states that ". . . [E]quity cannot give validity to a void contract." (*Id.* p.A-38). Also, ". . . the pari delicto doctrine may not be invoked" in a case of this kind (*id.* p.A-38), and ". . . neither may the doctrine of estoppel give a validating effect to a void contract." (*Id.* p.A-38).

11) Article 1409, Chapter 9, Civil Code of the Philippines (Appendix Y), sets out the Philippine public policy against equitable defenses or indirect enforcement of void Philippine contracts.

Probate Court's Rejection of Motions

Texas probate judge was personally engaged before and during trial and handed foreign authority and statements and text excerpts attached to motions and briefs concerning rules of conflicts of laws and foreign law. Notices of foreign law were filed on 3/5/93 and 3/8/93. Foreign law was urged in numerous motions--all denied without resulting showing that any of such law was ever applied in this case (see listing and dating Appendix EE). Events wherein the trial court was pressed to extend comity to foreign authority by both Petitioners and Respondents are very extensive and are set out tersely in part in an index to appendix of foreign authority (Appendix FF) filed in Court of Appeals. August 2, 1996. Additional foreign law has been supplied the court. None of such authority has been discussed.

Texas probate jurisdiction was obtained upon Nadina's undisclosed application, filed without notice stating under oath that: (1) Armando Gustilo was domiciled in Houston, Texas, (2) she was his widow, and (3) she and her daughter, June Salvacion, were the only claimants to the estate. Some four years later, Dr. Gerardo Gustilo filed an application for determination of heirship. Mary Joy and Jovi were named among potential heirs. They intervened and filed a complaint for removal of Nadina as administratrix for defalcation and failure

to perform her duties. Nadina set up Philippine agreements negotiated with heirs while she was administratrix as basis to estop claims of Petitioners and to deny them standing. During evidentiary hearing on the matter, Nadina consented to removal. The new administrator moved the court to determine that the deceased had been a domiciliary of the Philippines. Gerardo Gustilo filed a family tree and consented to dismissal because of remoteness of any contingent interest. All remaining parties were Philippine nationals and claimants to a Philippine domiciled estate.

On December 10, 1992, administrator obtained probate court order finding Armando Gustilo to be Philippine domiciliary, on temporary visa for emergency medical purposes with bond to assure his return--contrary to Nadina's previously-sworn representations. On February 16, 1993, Philippine court of Appeals found settlement agreements relied upon by Respondents were "void ab initio" (see Appendix I). Nadina was ordered removed as administratrix of the Philippine probate proceeding--a position she had obtained by virtue of the agreements.

Thereafter, motions were presented and denied with simple notation on motion or statement in the record, unless noted otherwise, regarding Nadina's spousal claim, June Salvacion's filiation and the void agreements, viz: Motion in Limine filed 4/5/93 (Tr. 2051), Motion for Special Instruction filed 4/15/93 (Tr. 2254); Motion for Instructed Verdict (S.F. 1545, esp. 1555, 1556); Exception to defendant's offer of ALJG38 and ALGJ39 (Appendix GG); Second Motion for Partial Summary Judgment Denying Heirship Claim of Nadina (Maravilla) Gustilo (Tr. 954), filed March 8, 1993; Motion to Set Aside Partial Summary Judgment Approving Heirship Claim of June Salvacion Gustilo and Cross-Motion for Partial Summary Judgment for Denial of the Heirship Claim of June Salvacion Gustilo (Tr. 1499), filed March 25, 1993; First Amended Motion for Judgment for Jose Vicente Gustilo, III and Mary Joy Ann Gustilo (Tr. 2262), filed May 19, 1993; and Motion for New Trial (Tr. 2476), filed July 8, 1993.

Each listed motion, presented shortly prior to, during and at or shortly after the conclusion of trial, was based upon application of foreign law. In no case did the court evidence any consideration of foreign authority. Each motion was denied in parts material to this appeal. The trial court's only reference to authority in any order concerned June Salvacion's Motion for Summary Judgment and was to Texas Family Code §12.02[11] without explanation as to whether reference was to the 1975, 1987 or 1989 amendments thereof (see Tr. 754). Court based June Salvacion's Philippine heirship determination upon Texas law. Only explanation given by the trial court for not following foreign law was in relation to *Gustilo v. Agdamag*. He refused to extend comity or preclusive effects, consider the opinion as a strong expression of Philippine law, or consider that the Opinion had stare decisis effects, or that it affected the Texas ancillary estate or this case in any fashion. The decision, given orally [see Appendix X, (S.F. 560-563)] was that the Philippine Court of Appeals opinion was not final. The opinion was made final by order of the Philippine Supreme Court. Thereafter, it was expressly called to the attention of the Fourteenth Court of Appeals (hereafter "14th Court of Appeals") **before briefs were filed**. But the court found it of no effect because not final prior to conclusion of trial in the probate court (see Opinion at Appendix D, pp.A-22).

Rejection by Court of Appeals Without Discussion of Points Concerning Foreign Law or Questions of Choice of Law

Philippine petitioners requested the 14th Court of Appeals, by appellate points, and later by motions for rehearing and rehearing *en banc* to discuss issues that would have controlled decision of this case as required by Rule 90(a) T.R.A.P. The court refused by order dated August 15, 1996. The Texas Supreme Court refused Petitioners' motion to publish so that the opinion be made public and thus stand the test of public viewing. By these denials, alien Petitioners were not accorded reasonable

[11] V.T.C.A., Family Code §12.02 (Amended 1987?).

or equal access to the adjudicatory processes of the courts. A responsible review of the work of the 14th Court of Appeals was made virtually impossible on rehearing, or rehearing *en banc*, or before this Court; nor was its opinion made readily available to public scrutiny. Violations of Rule 90(a) (*id.*) were specifically and forcefully called to the attention of the court in a motion for rehearing and a motion for rehearing *en banc*, viz:[12]

> "The trial court also refused to give consideration to Philippine or New Jersey law in the same respects as the panel. Its error in so doing, in each case, was made the subject of objection, preserved as error and included in appellate points overruled by the Opinion.
>
> "*Error:* (The Opinion never discusses the panel's duty to apply the law of the jurisdictions having the most significant relationship with the particular subject matter, such as the agreement for succession and status, and such as impugnation and filiation, succession and heirship, and foreign marriage.
>
> "1. The panel Opinion (without discussion) held: Settlement Agreements in direct violation of a Philippine statute were, nevertheless, valid. The Supreme Court of the Philippines has, by affirming an express holding on the matter, determined that the statute (Article 2035 Civil Code of the Philippines, *id.*) applies to the Settlement Agreement and vitiates its every aspect.
>
> "2. Without discussion or citation of other authority, the panel has rejected as an authoritative expression of Philippine law the opinion of the Philippine Court of Appeals--confirmed by the Philippine Supreme Court--that the Settlement Agreements are void.
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> "3. The panel declined to discuss Philippine law by which the legitimacy of June Salvacion was assured

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[12] Quotation is from Motion for Rehearing at pp.28-30. Substantially the same language appears in Motion for Rehearing *En Banc* at pp.26-29.]

whether or not records of the Registrar were changed. By its precedent-setting decision, the panel has rejected long-standing public policy of the Republic of the Philippines protecting the integrity of the family (Sections 263, 255, 256 of the Civil Code of the Philippines) and has permitted a novel means of impugnation of legitimacy and means of establishing family status and inheritance rights, all without counsel representing the interests of the child and other affected parties. The simple, expedient change of the records in the Registrar's office is made to suffice. (This method of impugnation has not previously been recognized in either the Philippines or the State of Texas.)

"4. Without discussion of Sections 263, 255 and 256 of the Civil Code of the Philippines or decisions of the Supreme Court of the Philippines, contrary to its Opinion (*Republic v. Bartolome* and *DeCastro v. Republic*, *supra*), **the panel has concluded that Judge Veloso, in an *ex parte* proceeding to correct a public record, had the judicial power to determine the filiation of June Salvacion upon a petition of her mother not requesting this relief, in an ex parte proceeding seven years after her birth, in which June Salvacion was not represented, and has decided that such representations in a non-contested order are binding upon all parties in this heirship proceeding.** (In *Republic v. Bartolome* and *V.D.A. DeCastro v. Republic*, the Philippine Supreme Court held it had "set to rest" any claim that such judicial power existed in a Philippine court as a result of a petition to obtain a correction of the record.)

"5. The panel Opinion does not discuss its ruling under any hypothesis that a self-serving entry in an application by Nadina ("[X] annulled"), not the decision or act of any public official, would have no weight and, more correctly, would be inadmissible against two separate testimonial declarations under oath (one of these

declarations the trial court below accepted as "UNDISPUTED FACT" on a summary judgment motion when Nadina was defending by seeking to prove a Texas marriage under Texas Family Code Section 2.22). Near conclusion of Plaintiffs' case, the court observed: "Counsel, I don't think we are going to have a dispute that she got married to this guy [Maravilla] in 1970 or that there was a civil annulment in 1985" (S.F. 395). But the Opinion does declare valid an otherwise invalid, bigamous, 1982 New Jersey marriage of Philippine citizens, void under the laws of the New Jersey licensing jurisdiction (see *Dakunzo, supra*) and an abomination under Philippine law (. . . [Article 71, Civil Code of the Philippines] . . .). This result is made possible by mid-trial rulings by which the trial court refused to give recognition to a plainly-stated, sworn waiver of evidence (judicial admission) made in the record under oath by Nadina.

"Inasmuch as the Philippine Civil Code does not allow intrusions upon its jurisdiction to disapprove bigamy of its non-Muslim citizens regardless of the situs at which a marriage license may have been obtained (. . . [Article 15] in conjunction with . . . [Article 71], *id.*), and because records of Nadina's annulment in 1985 and her sworn testimonial declaration in the decision by Judge Veloso are available against her in Philippine Courts, conflicting decisions will occur if Opinion is not corrected. But error of panel will perpetuate itself in the Philippines if Philippine courts show comity deference to the incorrect panel Opinion.

"The underlying error of the trial court and the error of the panel, by denying **any consideration** of matured property rights of Appellants under foreign law well expressed in a final, foreign decision have denied due and fair process to Appellants and equal and reasonable access to the requirements and benefits of comity under

Texas law. The error is prejudicial, requires correction, and demands reversal and rendition."

The issues presented by Appellants' Points of Appeal, First Point, parts d, e, f and g, Second Point A, and Second Point B, parts a, c, d, h, i, j, k, l, m, n, o, and Fourth Point, were all sustainable, as a matter of law, under foreign law. It was not possible under faithful adherence to requirements of Rule 90(a) T.R.C.P. to consider and rule upon these matters without reasonable discussion of Philippine and New Jersey statutes and case law. See Appendix AA for partial listing of statutes and cases discussed in Appellants' principal brief. Additional cases and statutes have been cited in the appeal below.

Claimed Violations of Customary International Law and U.S. Supreme Court Decisions by Trial and Appellate Courts

Customary international law[13] and decisions of U.S. Supreme Court[14] of the United States would require the Texas courts below to consider the just-cited foreign state and international authority in determining the primarily Philippine questions relating to Philippine family structure, Philippine estate devolution and enforcement or invalidation of Philippine contracts or agreements. Petitioners claim that the Texas courts were not "open" to adjudicate and enforce their rights, unwilling to receive and consider their Philippine titles and authorities and denied them a due and fair trial in respect to their titles to approximately $3,000,000 of their money on deposit in a Texas trust company. In short, the courts refused to perform mandatory adjudicatory functions guided by applicable international and foreign state law.

Three Resulting Miscarriages of Justice

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[13] *Triquet v. Bath*, 3 Burr 1480, 1481, approved *Bank of Augusta v. Earle*, 13 Peters 519, 536; 10 L.Ed. 274, 283 (1839).

[14] *Hilton v. Guyot*, 159 U.S. 113, 163, 40 L.Ed. 95 (1895); *Gutierrez v. Collins*, 583 S.W.2d 312, 320-322 (Tex. 1978).

There are three unjust results of the trial and appeals in Texas courts, and, hence, three obstacles barring dominium and enjoyment by Petitioners of their titles to inheritance from their father. All are constructed or reconstructed by the Texas Probate Court upon a basis not extending beyond that court's comprehension of what it believed to be applicable Texas law. All have been condoned upon appeal with no serious discussion:

1. Texas probate court granted summary judgment[15] under Section 12.02 of the Texas Family Code. The Texas Probate Court judicially denied the legitimacy of June Salvacion in a Texas proceeding in which neither her presumed father, Francisco Maravilla, nor now deceased Armando Gustilo, were parties. To meet the requirements of the Texas Family Code, the court relied upon findings in an *ex parte* Philippine proceeding to correct clerical errors in the Philippine public registry in which June Salvacion, herself, was not a party nor represented in any fashion. The court found, on motion for partial summary judgment (absent any summary judgment evidence of insemination by Gustilo or even a basis for its inference, and no evidence of impossibility of access of Maravilla), that June Salvacion was the illegitimate daughter of the deceased, but rich in estate, Armando Gustilo.

2. Texas probate court refused requested findings and instructions to the jury that Nadina was disabled by prior coverture under Philippine law to have contracted a marriage that could be valid in the Philippines. Nadina's judicial admissions in Philippines courts will prevent her claims of spousal interest in Gustilo Philippine estate in the Philippines (see expert opinion of Philippine law, Appendix Z). Nadina swore twice, in

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[15] Appendix HH, Order of court dated June 2, 1995. Court also denied Petitioner's cross-motion for summary judgment solely based in Philippine law.

unambiguous, pled instruments, to judicially-recognized fact[16] that her coverture (marriage to Maravilla) extended more than two years beyond date of her attempted marriage to Gustilo.

3. By giving force to settlement agreement declared void at inception by the Philippine Court of Appeals, Seventh Division[17] (the validity of the agreement was the issue before the court, and all parties were present), all titles of Petitioners were found to have been transferred to court-created new Gustilo family members, Nadina and June Salvacion.

Concluding Statement

The statement set forth above is necessarily atypical. It has been necessary to discuss law, as the judicial acts principally complained of are often refusals by Texas courts to perform mandated judicial functions required by law. The statement of the case is a statement of the circumstances of those refusals.

REASONS FOR GRANTING THE WRIT

Summary of Argument

Customary international law is a part of supreme federal law[18] and grants to aliens in our state courts rights provided by international custom. Also, express rights are assured aliens by formal multilateral treaties and declarations.[19] These are also a part of federal law.

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[16] See: Opinion of Philippine Court of Appeals in *Gustilo v. Agdamag* (Appendix I).

[17] Affirmed by the Philippine Supreme Court, Third Division on January 26, 1994 in G.R. No. 111237, *Nadina G. Gustilo, etc., et al. vs. Court of Appeals, et al.*

[18] International Law of the United States, Paust, Carolina Academic Press (1996), *C. The Right to a Remedy and Related Concerns*, pp.198, 199.

[19] UNIVERSAL DECLARATION OF HUMAN RIGHTS, cited at note 6; INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, cited at note 2.

Petitioners complained below that they had been denied any consideration of matured property rights under foreign law and under a final foreign decision and were denied due and fair process and equal and reasonable access to the benefits and uses of comity [Appendix X (S.F. 560-563)].

Nearly universal practice of comity and reciprocity among cooperating nations and well understood principles of conflicts of law demand that a dispute entirely among Philippine aliens involving only matters of uniquely Philippine concern be determined under Philippine law.

The Court of Appeals, apart from mention of deeply flawed chronology of events, advocated vigorously by opposing counsel,[20] repeatedly refused to consider effect of foreign law upon decisions of the trial and appellate courts, though expressly required to do so by Rule 90(a) T.R.A.P. Also, the Court of Appeals passed over, with a waive of a hand, points competently and seriously raised reflecting deeply prejudicial and cumulative effects of the trial court's one-sided pattern of error (see Opinion at Appendix D, p.A-26 - A-27 and see point of error and carefully-stated sub-points under Appellants' SIXTH POINT, reprinted at Appendix CC).

The failure of the Texas courts to give consideration to governing requirements of the supreme law of the land encompassing customary international law and cited treaties and compacts raised three issues for which standards of review or definition may bear some distinction, though each here applies,

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[20] See the following briefs and motions of Respondents filed in 14th Court of Appeals and in Texas Supreme Court, viz: *Brief of Respondent June Salvacion Gustilo in Response to Petitioners' Application for Writ of Error*, filed in Texas Supreme Court, at pp.2-3 ["While those Motions for Reconsideration were pending, the Petitioners brought an action in the Texas probate court."]; *Response to Motion for Stay Pending Petition to the Supreme Court of the United States for Writ of Certiorari*, filed 06/11/97 in the 14th Court of Appeals, at p.16 ["While the motions for reconsideration were still pending in the Philippine trial court, Jose (sic) and Mary filed this suit in the Texas probate court."

viz: (1) Petitioners are entitled to writ of certiorari and relief from the prior decisions of Texas courts because jurisdiction attaches and the decisions below contain serious errors under federal law (see especially Brief of Argument A) or (2) jurisdiction attaches and the Petitioners have suffered at the hands of state courts a "denial of justice", as that term is understood in the Law of Nations or as contemplated by relevant treaties and compacts binding the United States in its duties to these Philippine aliens (see especially Brief of Argument C), or (3) Petitioners have been denied Article VI and Fourteenth Amendment right of due process and protection of the supreme law of the land (see especially Brief of Argument B). Petitioners have asked this Court to consider whether or not they have been afforded *reasonable access* to a judicial determination of their rights under Philippine law and have been afforded an *effective remedy* as regards the recovery of approximately $3,000,000 of their deceased father's estate, deposited in a Texas trust company. They have also asked this Court to correct error in application of federal law by the lower courts. The points in the Brief of Argument necessarily overlap.

The United States Supreme Court is not powerless, for want of an appropriate jurisdictional base, to rectify intrusive judicial restructuring of a Philippine family and judicial reordering of customary Philippine devolution of a Philippine estate so as to suit uncontrolled predilections of a Texas probate court permitted to choose freely between application of Philippine or Texas or other unspecified law.

Brief of Argument

A. In suit involving Philippine nationals and a Philippine estate, Texas Probate Court violated "supreme federal law" by refusing to extend full credit and effect to directly applicable Philippine statutes and case law.

This appeal involves rights established under the constitution, laws and judicial decisions of the Republic of the Philippines

recognized by Congress of the United States on July 4, 1946[21] and currently assured respect and recognition by the Constitution, treaties, compacts and laws of the United States.

Under Article VI, clause 2 of the Constitution, the Constitution, Treaties and the "Laws of United States" are the "supreme Law of the Land; and **the Judges of every State are bound thereby**...." The "laws of the United States" include the customary "Law of Nations". Such law, while not mentioned explicitly in Supremacy Clause, is supreme federal law within the meaning of Article VI, clause 2.[22] (Our emphasis.)

> "A rule of international law or a provision of an international agreement derives its status as law of the United States from its character as an international legal obligation of the United States" [Restatement (Third) Foreign Relations Law of the United States (1986) at §111 (comment a)].

Section §112 of the Restatement (*id.*, comment a, p.58) states that "[t]he determination and interpretation of international law present federal questions, and their disposition by the United States Supreme Court is conclusive . . ."

> "State courts take judicial notice of federal law and will, therefore, take judicial notice of international law as law of the United States. Since it is a question of law, it need neither be pleaded or proved." (*Id.* at §113, comment a., p.61).

Controlling concepts of choice of law, comity, reciprocity and supreme law of the land require neither pleading nor proof.

The Statute of the International Court of Justice equates customary international law with "general practice accepted as

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[21] *Treaty of General Relations Between the United States of America and the Republic of the Philippines* (Appendix DD), cited at note 8.

[22] See Henfield's Case, 11 F. Cas. 1099, 1101 (C.C.D. Pa. 1793) (No. 6,360) (Jay, C.J.). See also Paust, *infra*, note 24 and note 13.

law."[23] "U.N. resolutions have been utilized by U.S. Courts, as aids in identifying the content of customary international law."[24] "Indeed, a unanimous resolution of the General Assembly may yet be the best evidence of ... a pattern of generally shared legal expectation or *opinion juris."* as to constitute the customary Law of Nations.[25]

Paust quotes Justice Gray in *The Paquete Habana*, 175 U.S. 677 (1900) and *Hilton v. Guyot*, 159 U.S. 113:

> "International law is part of our law and *must* be ascertained and administered by the courts of justice . . . as often as such questions are presented in litigation . . . duly submitted to their determination. The most certain guide, no doubt, for the decision of such questions is a treaty or statute of this country" [quoting *Hilton v. Guyot* at 163] (emphasis in original).

Even in the absence of an applicable treaty or statute on a necessary point of law,

> ". . . the *duty still* rests upon the judicial tribunals of ascertaining and declaring what the law is, whenever it becomes necessary to do so in order to determine the rights of the parties to suits . . .." *Hilton v. Guyot*, 159 U.S. 113, 163 (1895)]. (Emphasis in original.)

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[23] Statute of the International Court of Justice, art. 38(1)(b), 1977 I.C.J. Acts and Docs. 77, June 26, 1945, 59 Stat. 1055, T.S. No. 993, 3 Bevans 1179. All Member States of the United Nations are automatically parties to the statute.

[24] Paust, International Law of the United States, Carolina Academic Press (1996), Chapter 1. *Customary International Law*, pp. 1-50, revised from the original: *Customary International Law: Its Nature, Sources and Status as Law of the United States*, 12 Mich. J. Int'l. L. 59-91 (1990) at note 27 at p.4.

[25] See Paust, *ibid.*, at note 24; also see, e.g., Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S., 1986 I.C.J. 14, 99-100, 101-102, 106-07; Namibia Opinion, 1971 I.C.J. 3 74-75.

Chief Justice Taney of U.S. Supreme Court adopts English rule in *Triquet v. Bath* (3 Burr 1480, 1481), viz:

> ". . . Lord Mansfield quotes Lord Talbot as declaring a clear opinion, 'That the law of nations, in its full extent, was part of the law of England'--'That the law of nations was to be collected from the practice of different nations, and the authority of writers.'" (Reported as stated and cited by court in *Bank of Augusta v. Earle*, 13 Peters 519, 536, 10 LEd. 274, 283 [Sup.Ct. 1859].)

> ". . . [T]he authority of the law of nations . . . is as binding in matters of judicature--it is imperative and of absolute power. Its principles being known, can no more be set aside, evaded or disregarded than a settled principle of the common law. **Call it comity: still it is law, and part of the rights of individuals, who are wronged if it be denied to them.**" (*id.* p.536 from opinion by Chief Justice Taney). (Our emphasis.)

Customary international law includes well accepted rules relating to comity and conflicts of law. These concerns relate to United States foreign policy and should be of special concern to the United States Supreme Court [*Tel-Oren v. Libyan Arab Republic*, 726 F.2d 772, 783-4, 790 (D.C. 1984); *Banco National de Cuba*, 376 U.S. 398, 427 (1964).

Texas courts ordinarily agree with concepts of comity expressed in international affairs. cf. *Gutierrez*, *supra*, *Banco Minero*[26]; *Robertson*, *supra*; and *Gannon*, *supra*. Comity, under Texas law, is obligation of Texas courts to conform to supreme law of the land. Texas Supreme Court, in *Gutierrez*, noted "Even a casual survey of decisions from other jurisdictions indicates that elsewhere than Texas courts have experienced no great difficulty in applying foreign law . . .." (*id.* at p.321).

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[26] *Banco Minero v. Ross*, 138 S.W.224 (Tex.Civ.App.--San Antonio 1911), aff'd, 106 Tex. 522, 172 S.W. 711 (1915).

In ruling upon motions and exceptions of Petitioners, fully supported by foreign authority, probate court was bound by customary international law and supreme federal law to follow accepted principles of comity. However, Respondents have convinced each court below that: "TEXAS LAW IS CLEAR THAT COMITY IS PURELY A MATTER OF DISCRETION" (all emphasis supplied by counsel for June Salvacion). "Purely" is used in the sense of "without qualification". In this case, the Texas courts below have accepted that comity is determined parochially and is "purely" a matter of caprice. Texas or U.S. Supreme Court holdings have not been cited for such view. Texas Supreme Court opinions[27] not mentioned by Respondents would require reliance upon Philippine and New Jersey law in circumstances of this case. However, where rights of aliens are at stake and recognition of law of foreign nation is issue, proper reference is to supreme federal law, including Law of Nations.

What is presented here, though error in application of federal laws, is also absolute refusal of the reviewing courts to become open to consideration of controlling international and foreign law. This failure or refusal has denied Petitioners the very essence of due process. This was forcibly called to the attention of both courts below. But blanket denial by the courts could only be discerned clearly when it occurred--i.e., when the Court of Appeals refused to write an opinion discussing foreign law and refused a motion for rehearing (see Part B below).

B. The Texas Court of Appeals of the 14th District violated Rule 90(a) of Texas Rules of Appellate procedure and denied an essential appellate function by refusing or failing to discern, discuss and distinguish seasonably raised material law issues. Cumulative effect upon adversely affected Philippine nationals constituted not only a violation of due process rights but a *denial of justice* and appellate accountability.

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[27] *Gutierrez, supra*; *Robertson, supra*; and *Gannon, supra*.

Reference is made to pages 12-16, *supra*, relating to objections to court's refusal to adjudicate foreign law issues. Also, reference is here made to Appendix CC, consisting of pages 8 and 39-46 of Appellants' Brief in the Court of Appeals below reflecting the detail with which Appellants' Sixth Point was set forth in that brief and its careful references to the record and significant argument upon points raised.

By these references, the court is directed to matters which Court of Appeals refused to consider, discuss, or adjudicate, though seriously, carefully and correctly raised for consideration. Under T.R.A.P. §6(B), Rule 90(a), Court of Appeals was required to "hand down a written opinion . . . which shall address every issue raised and necessary to final disposition of appeal" (see pages 13, 14 *supra*). All points were succinctly raised in Appellants' Brief, with careful references made to the record.[28]

It is clear from Opinion of the Court, (Appendix D), that Court of Appeals declined to discuss just-referenced points of appeal--Second Point A and Second Point B and Fourth Point--on basis of applicable Philippine law. Fourth Point was dealt with on basis of effect given by Court of Appeals to false chronology of events offered by Respondents and an observation by the court that Philippine decision avoiding settlement agreements was not final at time of trial in probate court (see Opinion, Appendix D at p.A-26 - A27), though it was final prior to briefing in appellate court. Yet, a fatal statutory flaw under Philippine law remained undiscussed (Appendix W [Art. 2035 Phil.CC]).

Conclusion below that Petitioners initiated proceedings in Texas concerned with the validity of the settlement agreements is demonstrably false from any viewing of the record.

The Opinion contains no discussion of Petitioner's Sixth Point, as required by Rule 90(a) (*id.*). The Court of Appeals

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[28] The points are found in excerpts from Appellants' Brief, also contained in Appendix CC.

simply called the point and its carefully specified sub-points "multifarious". *Wood Oil Distributing v. State of Texas*, 746 S.W.2d 1, 3 (Tex.App.--El Paso 1987, writ dism'd); *Fiberboard Corp. v. Pool*, 813 S.W.2d 658 (Tex.App.--Texarkana 1991, no writ); and *Scott v. McLennan*, 306 S.W.2d 943 (Tex. Civ. App.--Waco 1957, writ ref'd n.r.e.) reflect approved practice in Texas of raising points for appeal that raise for consideration cumulative effect of a number of errors of trial court. This was accomplished carefully and in compliance with Texas appellate procedures. Petitioners would show that they have been severely handled in the trial and appellate court. This is a matter intended to be forestalled under the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

The Supreme Court of Texas has considered compliance with Rule 90(a) a very serious obligation of appellate courts and refers to the problem as "a recurring problem: the failure of courts of appeals to address every issue raised and necessary to final disposition of the appeal". The Texas Supreme Court has further held that Rule 90(a) is mandatory. "The courts of appeals are not at liberty to disregard them. These rules serve the salutary purpose of eliminating unnecessary delay and expense in the appellate process." ". . . [T]he rules do mandate full consideration of all issues raised to move the case as far as possible toward final disposition". *Lone Star Gas Co. v. R.R. Comm'n of Texas*, 767 S.W.2d 709, 710 and 711 (Tex. 1989). To similar effect, the Texas Supreme Court restated its position in *State Bar of Texas v. Evans*, 774 S.W.2d 656 (Tex. 1989). Discussion is contained primarily in fn. 6 at page 658.

Petitioners were denied accountability, which every suitor is entitled in respect to the court, itself. This would only have been accomplished had a **full opinion**, dealing with the true issues, been prepared and made public. Petitioners were handicapped in presentation of this petition by want of fair discussion and decision of all issues. An attempt to obtain a writ of error from the Supreme Court of Texas was also made very difficult--not only by want of an opinion from which to appeal,

but also because the opinion contained factual accounts not in keeping with the record. Failure of court to provide an opinion in accordance with Rule 90(a) T.R.A.P. was, in this case, for Petitioners, the equivalent of the denial of an appeal and is an injustice warranting reversal in accord with the Texas Supreme Court decisions just cited.

C. Texas courts, at each level, failed to accord Philippine Petitioners fair and due judicial process under applicable Philippine, New Jersey and established, customary international law. This failure or refusal to pronounce and apply applicable law results in a denial of justice to petitioners under the Law of Nations and violates the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

Drafters of the Judiciary Act of 1789 intended that aliens be assured "access to federal courts to vindicate any incident which, if mishandled by a state court, might blossom into an international crisis" [*Tel-Oren v. Libyan Arab Republic*, 726 F.2d 772, 782-83 (D.C. 1984)]. Substantial denial of justice by domestic court to aliens in such manner as to implicate the national commitment of due and fair access to our courts by aliens under the Law of Nations becomes the responsibility of the United States (*id.*). A state is held responsible for the decision of one of its courts which violates international law [P. Jessup, The Uses of International Law, 101 (1959)] or violates due process considerations as extended to aliens. States also bear directly a responsibility under international law[29]. The state judiciary is an instrumentality of the state capable of violating Fourteenth Amendment rights and Article VI rights, or even rights under Title 42 §1983 USC. After the state, itself, refuses to correct such violations, the matter is ripe for consideration by the United States Supreme Court.

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[29] See The International Responsibility of States for Denial of Justice, A. Freeman, 1938.

Due process, promised to these Philippine aliens by extension of Constitutional rights secured to our own citizens under Clause 2, Article VI and under Fifth and Fourteenth Amendments, and also assured under international law, treaties and compacts[30], is denied by impermissibly limited and qualified access to courts; for a court that "refuses . . . to apply international law denies its own validity"[31]. Arbitrary refusal of the court to exercise fully adjudicative functions of its jurisdiction, properly invoked by Petitioners, is effective denial of access to the judicial process and a *denial of justice* (*id.* §711 and *Tel-Oren*, *supra*, at 783).

Petitioners have demonstrated that they have been denied titles assured to them under law of their native land. Texas Courts have refused to give recognition to those laws. The Court of Appeals below has refused to disclose the basis upon which it has avoided application of controlling Philippine law. Apart from the Supreme Court of the United States, Petitioners are now powerless to obtain redress. Issues in this case do not touch any American citizen or Texas property.[32] Yet, incredibly, a Texas probate court has decided the most delicate questions of Philippine family law on the basis of Section 12.02 of the Texas Family Code and an *ex parte* summary decision to correct a public registry. A Texas Court of Appeals has refused to be informed or aided by the opinion of the Philippine Seventh Court of Appeals (affirmed by the Philippine Supreme Court) on the very central issue in this case, fully tried and argued in the forum best suited to its determination. That court neither recognized nor discussed the decisions of the highest courts in the Philippines--especially *Gustilo v. Agdamag*, involving these

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[30] RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 711 (1986).

[31] Paust, *supra*, note 24 at p.8.

[32] Funds deposited in the Kanaly Trust Company are funds of a Philippine estate.

very parties and issues. Nor has the court fully disclosed the basis of its holdings. (See Statement of the Case, *supra*, p.12-16).

Titles to Mary Joy and Jovi's family inheritance have been taken from them and placed in the hands of doubtful pretenders. Have they redress?

The Universal Declaration of Human Rights provides:

> "Article 7. All are equal before the law and are entitled--to equal protection of the law . . ."
>
> "Article 8. Everyone has the right to an effective remedy in the competent **national tribunals** for acts violating the fundamental rights granted him by the constitution or by law." [Emphasis added.]
>
> "Article 10. Everyone is entitled in equality to a fair and public hearing by an independent and impartial tribunal, in determination of his rights and obligations. . .."

Article 2. 3. of the Covenant on Civil and Political Rights (see note 2, *supra*) commits United States to ensure that *"(a) ...any person* whose rights or freedoms as herein recognized are violated shall have an ***effective remedy***, notwithstanding that the violation has been committed by persons acting in an *official capacity.... (b) "...any person* claiming such remedy shall have his right thereto determined by *...competent judical authority."* (Our emphasis).

Justice Edwards, speaking for the court in *Tel-Oren*, note 1, *supra,* cites Alexander Hamilton and James Madison in concerns about state courts handling matters affecting foreign aliens such as heirs of former Philippine Governor Armando Gustilo, viz:

> "The union will undoubtedly be answerable to foreign powers for the conduct of its members. And the responsibility for an injury ought ever to be accompanied with the faculty of preventing it. As the denial or perversion of justice by the sentences of courts, as well

> as in any other manner, is with reason classed among the just causes of war, it will follow that the federal judiciary ought to have cognizance of all causes in which the citizens of other countries are concerned." THE FEDERALIST No. 80, at 536 (A. Hamilton) (*id.* 783).

Conclusion:

Petitioners cited *Martin v. Hunter's Lessee* as authority in this case. [See note 1, supra.] *Martin* is strikingly similar to the matter presently before the court (*Gustillo*). *Martin* involved refusal of a Virginia court to obey mandates arising under supreme federal law, including the Law of Nations and encompassing Treaty in a matter affecting the title of an alien (Denny Martin, a British subject), to an inheritance. *Gustillo* involves refusal of the Courts of Texas to obey mandates arising under of supreme federal law, including the Law of Nations and significant Treaties and Compacts in a matter involving titles of aliens, (Mary Joy and Jose Vicente Gustillo, Philippine nationals) to an inheritance. Justice Story delivered the opinion in *Martin*:

State courts "...are expressly bound by the letter of the constitution; and if they should *unintentionally* transcend their authority, or misconstrue the constitution, there is no more reason for giving their judgments an absolute or irresistible force than for giving in to the acts of the other co-ordinate departments of state sovereignty" (*id.* p.344).

This Petition for Writ of Error establishes a *prima facie* showing of injury suffered due to state court mishandling of questions seriously implicating federal concerns, of denial of due process and fair and equal access to the right of appeal in Texas, of denial of justice under international standards of comity and choice of law, of virtual denial of Philippine birth rights of Petitioners by way of denial of Philippine estate succession under Philippine law and of denial of Fourteenth Amendment due process and Article VI protection.

For such reason, it is respectfully suggested that writ of error should issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Raymond M. Hill, Attorney for Petitioners, do hereby certify that on this the _____ day of July, 1997, true and correct copies of the foregoing Petition for Writ of Certiorari to the United States Supreme Court were sent by certified mail, return receipt requested, in accordance with Rule 29 of the Supreme Court Rules, to the following counsel for Respondents:

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